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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AMET MUFIT FERMAN, PETRUS J.L. VAN BEEK,
and JAMES H. ERRICO

Appeal 2009-006438
Application 09/823,377
Technology Center 2400

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT,
and ROBERT E. NAPPI, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 2-5, 11-38, and 43-48.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part the Examiner's rejections of these claims.

INVENTION

The invention is directed to a system for managing audiovisual information presented to a user. The system collects information about a user's preferences and uses this information to present the most relevant audiovisual information to the user. *See* Spec. 1-10. Claim 24 is representative of the invention and reproduced below:

24. In combination with an audiovisual information management system resident on an electronic device having a memory, a usage history description scheme for at least one of an audio, an image, and a video comprising a plurality of frames, said usage history description scheme comprising:
- (a) information about a user with respect to said at least one of said audio, image, and video based upon previous usage of said at least one of said audio, image, and video; and
 - (b) said usage history description scheme including data indicating whether personal identification information of said user is intended to be revealed to third parties.

REFERENCES

Osawa	US 5,956,037	Sep. 21, 1999
Labeeb	US 2003/0093792 A1	May 15, 2003 (filed Jun. 27, 2001)

² Claims 1, 6-10, 39-42, and 49 have been cancelled.

Maissel	US 6,637,029 B1	Oct. 21, 2003 (filed Jun. 10, 1999)
Lee	US 7,127,735 B1	Oct. 24, 2006 (filed May 19, 2000)

REJECTIONS AT ISSUE

Claims 24-27 and 45 are rejected under 35 U.S.C. § 102(e) as being anticipated by Labeeb. Ans. 3-4.

Claims 2-5, 11-15, 28-38, 43-44, and 46-48 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Maissel in view of Osawa. Ans. 4-8.

Claims 16 and 19-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Maissel in view of Osawa and Lee. Ans. 8-11.

Claims 17-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Maissel in view of Osawa, Lee, and Labeeb. Ans. 11.

ISSUES

Group I (Claims 24-27 and 45)

Appellants argue on pages 8-9 of the Appeal Brief and pages 5-8 of the Reply Brief that the Examiner's rejection of claims 24-27 and 45 is in error. Appellants select claim 24 as representative of the group comprising claims 24-27 and 45. App. Br. 8. Appellants argue that Labeeb does not disclose "said usage history description scheme including data indicating whether personal identification information of said user is intended to be revealed to third parties." App. Br. 8; Reply Br. 4.

Thus, with respect to claims 24-27 and 45, Appellants' contention presents us with the issue: Did the Examiner err in finding that Labeeb discloses a usage history description scheme including data indicating whether personal identification information of said user is intended to be revealed to third parties?

Group II (Claims 2-5, 34-38, and 48)

Appellants argue on pages 9-10 of the Appeal Brief and page 8 of the Reply Brief that the Examiner's rejection of claims 2-5 is in error. Appellants select claim 2 as representative of the group comprising claims 2-5. App. Br. 9-10; Reply Br. 8. Appellants argue that neither Maissel nor Osawa discloses a scheme stored on a mobile device that includes an attribute that prevents updating said usage preferences description scheme. App. Br. 10; Reply Br. 8.

Thus, with respect to claims 2-5, Appellants' contention presents us with the issue: Did the Examiner err in finding that Maissel in view of Osawa disclose a scheme stored on a mobile device that includes an attribute that prevents updating said usage preferences description scheme?

Additionally within Group II, Appellants argue on pages 10-11 of the Appeal Brief and page 9 of the Reply Brief that the Examiner's rejection of claims 34-38 and 48 is in error. Appellants select claim 34 as representative of the group comprising claims 34-38 and 48. App. Br. 10; Reply Br. 9. Appellants argue that neither Maissel nor Osawa discloses defining multiple levels of granularity for the usage history description scheme. App. Br. 10-11; Reply Br. 9.

Thus, with respect to claims 34-38 and 48, Appellants' contention presents us with the issue: Did the Examiner err in finding that Maissel in

view of Osawa disclose defining multiple levels of granularity for the usage history description scheme?

Group III (Claims 11-15 and 43)

Appellants argue on pages 11-12 of the Appeal Brief and pages 9-10 of the Reply Brief that the Examiner's rejection of claims 11-15 and 43 is in error. Appellants select claim 11 as representative of the group comprising claims 11-15 and 43. App. Br. 11; Reply Br. 9. Appellants argue that neither Maissel nor Osawa discloses automatically updating a usage preference description on a mobile storage device when the device is inserted in the system. App. Br. 11; Reply Br. 9-10.

Thus, with respect to claims 11-15 and 43, Appellants' contention presents us with the issue: Did the Examiner err in finding that Maissel in view of Osawa disclose automatically updating a usage preference description on a mobile storage device when the device is inserted in the system?

Group IV (Claims 16-23 and 44)

Appellants argue on pages 12-13 of the Appeal Brief and pages 10-11 of the Reply Brief that the Examiner's rejection of claims 16-23 and 44 is in error. Appellants select claim 16 as representative of the group comprising claims 16-23 and 44. App. Br. 12; Reply Br. 10. Appellants argue that none of the references discloses removable storage that is not used by the system to perform any of the following actions: (i) "selecting said at least one of an audio, an image, and a video; (ii) filtering said at least one of an audio, an image, and a video; and (iii) searching at least one of an audio, an image, and a video." App. Br. 13; Reply Br. 11.

Thus, with respect to claims 16-23 and 44, Appellants' contention presents us with the issue: Did the Examiner err in finding that the references disclose removable storage that is not used by the system to (i) select at least one of an audio, an image, and a video; (ii) filter said at least one of an audio, an image, and a video; and (iii) search at least one of an audio, an image, and a video?

Group V (Claims 28-33 and 46-47)

Appellants argue on pages 13-14 of the Appeal Brief and pages 11-12 of the Reply Brief that the Examiner's rejection of claims 28-33 and 46-47 is in error. Appellants select claim 28 as representative of the group comprising claims 28-33 and 46-47. App. Br. 13; Reply Br. 11. Appellants make the same argument with respect to claim 28 as with respect to claim 34. App. Br. 13-14; Reply Br. 11-12. Thus, with respect to claims 28-33 and 46-47, Appellants' contention presents us with the same issue as claim 34.

FINDINGS OF FACT (FF.)

1. Maissel discloses a system including an intelligent agent 130 that extracts characteristics of a program being viewed by a user and stores this data in a viewer preference profile in a profile storage unit 140. Col. 12, ll. 16-25 and Figs. 1-3.
2. The system may contain an optional viewer preference profile loading apparatus 160 that allows a viewer preference profile to be loaded from a disk or smart card. Additionally, the viewer preference profile loading apparatus 160 allows a user to record a viewer preference profile on a disk or smart card. Col. 14, l. 54-col. 15, l. 17 and Figs. 1-3.

ANALYSIS

Group I (Claims 24-27 and 45)

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 24. Claim 24 requires data that indicates whether third parties are privy to a user's personal identification information. The Examiner finds that Labeeb discloses setting privacy at the manufacturer or allowing users to determine privacy settings through the use of a special EUE (End User Equipment). Ans. 12. Appellants argue that these privacy settings are implemented through the use of special hardware rather than data, as required by the claim. App. Br. 4; Reply Br. 9. Appellants argue that rather than indicating whether data is to be revealed, the set top box just does not allow personal information to be revealed. App. Br. 5. Appellants are therefore arguing that EUE that contain privacy filters or settings from the manufacturer do not contain software to indicate whether or not to reveal personal information. Reply Br. 4-5. We do not find that the evidence cited by Appellants is sufficient to support the findings asserted by Appellants' argument. Therefore, we are not persuaded by these arguments..

Additionally, Appellants argue that personal identification is never revealed to third parties because Labeeb aggregates personal demographic information from thousands of users. Reply Br. 7. We do not find this argument persuasive since it is not commensurate with the scope of the claim. The claim only requires that information is "intended" to be revealed to third parties, not that information is actually revealed.

Accordingly, for the reasons stated above, we sustain the Examiner's rejection of claim 24 and claims 23-27 and 45, which have been grouped with claim 24.

Group II (Claims 2-5, 34-38, and 48)

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 2. Claim 2 requires an attribute stored on the mobile storage device that prevents the system from updating the usage history description scheme. Appellants argue that neither Maissel nor Osawa discloses this limitation. We disagree.

The Examiner finds that Maissel discloses a system wherein the user preference profile can be recorded on a disk or smart card, i.e., mobile storage device, and uploaded at another apparatus. Ans. 13. However, before the profile is stored, the user can have the profile displayed so as to add, delete, or modify any information contained in the user preference profile. Ans. 13-14. In particular, the user is able to turn off or on the collection of viewer preference profile information. Ans. 14. As a result, once the mobile storage device is inserted into an apparatus, the user preference profile is uploaded, and the system is prevented from updating the preference profile if the collection of viewer preference profile information is turned off. Thus, we are not persuaded by Appellants' argument.

Appellants respond in the Reply Brief on page 8 that the Examiner did not allege that this limitation was disclosed by Maissel until the Examiner's Answer. We are not persuaded by this argument since the timeliness of such assertion is a petitionable, not appealable, issue. We are additionally not persuaded by this argument since the Examiner cited the particular portion

of Maissel that discloses the above limitation on page 6 of the Final Office Action. Thus, we sustain the Examiner's rejection of claim 2 and claims 3-5 that have been grouped with claim 2.

However, Appellants' arguments have persuaded us of error in the Examiner's rejection of claim 34. Claim 34 requires defining the usage history description scheme at multiple levels of granularity and automatically accumulating and storing the usage history description scheme on a mobile device. Appellants argue that neither Maissel nor Osawa discloses multiple levels of granularity or storing the usage history description scheme automatically on a mobile storage device. App. Br. 9; Reply Br. 11. We agree.

The Examiner finds that Maissel discloses a mobile terminal that replaces the profile storage unit. Ans. 14. Since the profile storage unit updates automatically, then the mobile terminal also updates automatically. Ans. 6. We disagree. Maissel's intelligent agent 130 stores the viewer preference profile in a profile storage unit 140. FF 1. The system can contain an option viewer preference profile loading apparatus 160. FF 2. When this device 160 is present, viewer preference profiles may be loaded from or recorded to a recording medium, i.e., a disk or smart card. FF 2. The Examiner, therefore, has not shown nor do we find any disclosure in the reference indicating that recording to a mobile storage device is done automatically.

Additionally, the Examiner finds that defining multiple levels of granularity is disclosed by Osawa's VCR-like functions that include pausing, skipping, rewinding, fast-forwarding, etc. Ans. 14. We disagree. Multiple levels of granularity refer to separating the data into different

levels, such as indicating a program as a slasher program rather than the broader classification of horror program or a romantic comedy rather than the broader classification of comedy. Reply Br. 9. The Examiner, therefore, has not shown where this limitation is disclosed. As a result, we do not sustain the Examiner's rejection of claim 34 and claims 35-38 and 48 that have been grouped with claim 34.

Group III (Claims 11-15 and 43)

Appellants' arguments have persuaded us of error in the Examiner's rejection of claim 11. Claim 11, like claim 34, requires automatically updating the usage preference description on a mobile storage device. Appellants make the same argument with respect to claim 11 as with claim 34. App. Br. 11; Reply Br. 10. Thus, we do not sustain the Examiner's rejection of claim 11, and claims 12-15 and 43 that have been grouped with claim 11, for the same reasons as discussed *supra* with respect to claim 34.

Group IV (Claims 16-23 and 44)

Appellants' arguments have persuaded us of error in the Examiner's rejection of claim 16. Claim 16 requires that the audiovisual information management system not use the usage preference description scheme updated from a mobile storage device to select, filter, or search at least one of an audio, an image, and a video. Appellants argue that all of the references cited by the Examiner disclose that which the claim tries to prevent. App. Br. 12; Reply Br. 11. We agree.

The Examiner finds that Maissel discloses that the mobile terminal performs the functions of the system that include filtering out specific content. Ans. 17. Additionally, the Examiner finds that Osawa discloses a system that edits data based on the extracted operation history information.

Ans. 18. Finally, the Examiner finds that Lee discloses a system wherein profile information is uploaded from a profile card and transferred to a server where it is analyzed. Ans. 18. Thus, each of the references discloses that the system uses the information on the mobile storage device to at least select, filter, or search an audio, image, or video. As a result, we will not sustain the Examiner's rejection of claim 16 and claims 17-23 and 44 that have been grouped with claim 16.

Group V (Claims 28-33 and 46-47)

Appellants' arguments have persuaded us of error in the Examiner's rejection of claim 28. Claim 28, like claim 34, requires defining multiple levels of granularity. Appellants make the same argument with respect to claim 28 as with claim 34. App. Br. 13; Reply Br. 12. Thus, we do not sustain the Examiner's rejection of claim 28, and claims 29-33 and 46-47 that have been grouped with claim 28, for the same reasons as discussed *supra* with respect to claim 34.

CONCLUSION

The Examiner did not err in finding that Labeeb discloses a usage history description scheme including data indicating whether personal identification information of said user is intended to be revealed to third parties.

The Examiner did not err in finding that Maissel in view of Osawa discloses a scheme stored on a mobile device that includes an attribute that prevents updating said usage preferences description scheme

The Examiner erred in finding that Maissel in view of Osawa discloses defining multiple levels of granularity for the usage history description scheme.

The Examiner erred in finding that Maissel in view of Osawa discloses automatically updating a usage preference description on a mobile storage device when the device is inserted in the system.

The Examiner erred in finding that the references disclose removable storage that is not used by the system to (i) select at least one of an audio, an image, and a video; (ii) filter said at least one of an audio, an image, and a video; and (iii) search at least one of an audio, an image, and a video.

SUMMARY

The decision of the Examiner to reject claims 2-5, 24-27, and 45 is affirmed.

The decision of the Examiner to reject claims 11-23, 28-38, 43-44, and 46-48 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a)(1)(iv).

Appeal 2009-006438
Application 09/823,377

AFFIRMED-IN-PART

ELD

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